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No. 84-347

In the Supreme Court of the United States

OCTOBER TERM, 1984

JAMES SHAW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that a Customs officer lacked authority to board his vessel while it was located in an inland waterway.

1. After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of possessing an unregistered automatic weapon, in violation of 26 U.S.C. 5861(d) and 5871. He was sentenced to three months' imprisonment. The court of appeals affirmed (Pet. App. A13-A19).

a. The evidence at trial, which is not in dispute, showed that petitioner, a former Miami police officer, possessed a fully automatic rifle on board his 23-foot open boat. That weapon was not registered with the Department of the Treasury as required by federal law.

On the morning of August 13, 1982, Customs Patrol Officer Doimeadios and Border Patrol Officer Epperly were patrolling by car an area near Miami known as Baker's Haulover. At about 8:00, they saw petitioner and several other men launch a 23-foot boat into the water from a trailer (Pet. App. A13-A14, D25). Officer Doimeadios decided to check the boat's documentation. Doimeadios met petitioner on the dock, identified himself, and learned that petitioner owned the boat. Doimeadios then asked if he could check the boat's documents, and petitioner began to walk toward the boat (*id.* at A14, D25-D26). Doimeadios followed and asked whether there were any weapons on board. Petitioner said he had a pistol and a rifle. Because petitioner was several steps ahead of him, Doimeadios told petitioner not to touch the weapons until Doimeadios had boarded the boat (*id.* at A14, D27).

After Doimeadios was aboard, he asked petitioner if he could see the weapons. Petitioner removed an open lock from the boat's center console and withdrew the guns. Each was in a zippered case. Doimeadios removed the guns from their cases and examined them. He saw that the rifle had three selector positions, but petitioner denied that it was an automatic weapon. Petitioner was arrested after testing of the rifle showed that it was fully automatic (*id.* at A14-A15, D28-D29).

b. Prior to trial, petitioner moved to suppress the rifle, contending that the Customs officer lacked authority to board his boat. The district court denied his motion. That court found that petitioner had consented both to the boarding and the search that revealed the guns (*id.* at D23-D37). The court of appeals affirmed but did not reach the issue of consent. Relying on this Court's decision in *United States* v. *Villamonte-Marquez*, No. 81-1350 (June 17, 1983), the court of appeals concluded that Officer Doimeadios had authority under 19 U.S.C. 1581 to board

petitioner's boat. The court held that *Villamonte-Marquez's* reasoning applied to the instant case because the waters of Baker's Haulover, where petitioner's boat was located, provided ready access to the sea via the Intracoastal Waterway (Pet. App. A15-A17 & n.4).

2. In *Villamonte-Marquez*, this Court held that Customs officers acting pursuant to 19 U.S.C. 1581(a) may board vessels in inland waters and conduct documentation checks without having a reasonable suspicion of a violation of law. Petitioner contends (Pet. 6-10), however, that *Villamonte-Marquez* does not apply in this case because the officers had just observed the boat being launched and therefore "knew with certainty that the * * * boat had not previously been on the open seas on the date of the boarding" (Pet. 8). Petitioner argues (Pet. 7) (emphasis in original) that "[t]he object behind the decision in *Villamonte-Marquez, supra,* was the creation of the least intrusive method to enable customs officers to conduct documentation checks of vessels which *might* have come from the open seas."

There is of course no doubt that Section 1581(a) expressly authorizes a nonconsensual boarding in the circumstances of this case. Moreover, there is no suggestion in *Villamonte-Marquez* that boardings and document checks are constitutionally permissible only if the officers have cause to believe that the vessel recently visited international or foreign waters. And contrary to petitioner's contention, controlling the entry of persons and goods into this country was not the sole governmental interest found to justify such boardings and inspections. The Court noted (slip op. 12) that the documentation laws, which 19 U.S.C. 1581 helps to enforce, serve many other important purposes, such as the "regulation of participation in certain trades," "enforcement of various environmental laws," monitoring exports, and "ensuring safety on American waterways." These interests justify suspicionless boardings and document checks

whether or not the vessel has recently visited international or foreign waters, a practice that has been authorized by Congress since the earliest days of the Republic.

In *Villamonte-Marquez*, the Court did note (slip op. 12) that the need for boardings and document checks is greatest in those inland waters with ready access to the open sea. As the court of appeals noted, however, the boarding in this case did take place in just such a spot. Other cases have sanctioned suspiciousless boardings in similar locations. See *United States* v. *Bain*, 736 F.2d 1480, 1487-1488 (11th Cir. 1984) (boat stationary in Miami harbor); *United States* v. *Albano*, 722 F.2d 690, 692-693 & n.1 (11th Cir. 1984) (sailboat observed at anchor in river leading to Intracoastal Waterway).[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[1]We also note that the district court found that petitioner had consented to the boarding here as well as to the Customs officer's request to see petitioner's weapons (see Pet. App. D23-D37). The court of appeals did not reach the propriety of the district court's ruling (*id.* at A15 n.1), and petitioner does not contest it here. It thus would appear that there is an independent basis, aside from the issue petitioner raises, for concluding that the boarding and search did not infringe petitioner's Fourth Amendment rights.

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